

1 Karen M. Kraus (CA Bar No. 181756)
ENVIRONMENTAL DEFENSE CENTER
2 906 Garden Street
Santa Barbara, CA 93101
3 Telephone: 805-963-1622
Facsimile: 805-962-3152

4 Attorneys for CALIFORNIA TROUT, INC.
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11 **STATE OF CALIFORNIA**
12 **STATE WATER RESOURCES CONTROL BOARD**
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14)
15 In the Matter of:)
16)

17 Hearing to Review the U.S. Bureau of)
Reclamation Water Rights Permits)
18 (Applications 11331 and 11332) – Cachuma)
19 Project Phase 2)
20)
21)
22)

CALIFORNIA TROUT, INC.'S
OPPOSITION TO CITY OF LOMPOC'S
MOTION TO STRIKE

1 The City of Lompoc (“Lompoc”) has filed a Motion to Strike requesting the State Water
2 Resources Control Board (“Board”) to strike Appendices 1-4 of CalTrout’s Closing Brief. Lompoc’s
3 Motion to strike is premised on the same grounds as the Member Units’ February 18, 2004 Motion to
4 Strike (“Member Units’ Motion”). Lompoc argues that Appendices 1, 3 and 4 are evidence, not
5 previously part of the hearing record, and therefore not properly submitted with a closing brief. Lompoc
6 Motion to Strike (“Lompoc’s Motion”) at 2, 3-5; See also, Member Units’ Motion at 1-5. Lompoc also
7 argues that Appendix 2 violates the page limits for closing briefs. Lompoc’s Motion at 2; see also
8 Member Units’ Motion at 5, fn. 2. For the reasons discussed in CalTrout’s February 27, 2004 Opposition
9 to Member Units’ Motion to Strike, CalTrout opposes Lompoc’s Motion, and CalTrout hereby
10 incorporates its Opposition to Member Units’ Motion to Strike into this Opposition. Appendices 1, 3 and
11 4 of CalTrout’s Closing Brief are not evidence and were submitted to facilitate the Board’s ability to
12 fashion an appropriate order, if and only if, the Board determines based on evidence in the record that a
13 fish passage feasibility study, a water conservation study, and/or a study of modifications to the
14 downstream water rights release schedule should be conducted. Appendix 2 was submitted in
15 accordance with direction from the Hearing Officer during the Hearing. Submission of these appendices
16 is thus consistent with the procedural rules for the Cachuma Project hearing, and the City of Lompoc’s
17 Motion to Strike should therefore be denied.

18 Lompoc’s Motion provides no new basis on which to strike CalTrout’s Appendices 1-4;
19 however, certain statements in this Motion, which were not included in the Member Unit’s Motion,
20 must be directly addressed. First, Lompoc’s Motion incorrectly asserts that the topic of modifying the
21 existing downstream water rights release schedule (the subject of CalTrout’s Appendix 4) was not
22 introduced during the Hearing itself. Lompoc Motion at 3-5. To the contrary, this issue was explicitly
23 raised during the hearing by CalTrout and other parties. See Ex. CT 30 at 12 and T:821 (Keegan
24 testimony); Ex. DFG 1 at 6 (McEwan testimony); see also, CalTrout cross-examination of Shahroody at
25 T:416-417 and T:1047.¹ In fact, the Member Units presented rebuttal testimony on this topic. See Ex.
26 MU 264, part 3 and T:1001-1008 (Shahroody testimony). Second, Lompoc attempts to disparage the

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28 ¹ CalTrout also explicitly identified this as an issue in its Written Opening Statement and during
counsel’s oral opening statement. See, CalTrout’s Written Opening Statement at 14, 20, and 22; T:777-
778.

1 evidentiary basis for a study of modifications to the downstream water rights release schedule and
2 presents argument in support of its position regarding potential impacts to downstream water rights from
3 CalTrout's Alternative 3A2. Lompoc Motion at 4-5. Such statements belong in Lompoc's closing brief,
4 not a Motion to Strike. CalTrout properly identified, in its closing brief, the legal and evidentiary basis
5 for its position that a study of modifications to the downstream water rights release schedule should be
6 conducted. CalTrout's Closing Brief at 25-28. CalTrout's arguments in this regard, do not rely on
7 Appendix 4, and Lompoc cannot, under the guise of a Motion to Strike Appendix 4, introduce reply
8 arguments to CalTrout's closing arguments. See, February 11, 2004 Letter from Dana Differding to
9 Service List (indicating that Board will not accept reply briefs).

10 For the reasons discussed above, and in CalTrout's Opposition to Member Units' Motion to
11 Strike, the City of Lompoc's Motion to Strike should be denied. To the extent the Board determines that
12 any of CalTrout's appendices should be stricken, and that it is necessary and appropriate to also strike
13 portions of CalTrout's Closing Brief referencing any stricken appendices, such references in the Closing
14 Brief are limited to the following statements: 1) page 14, line 20 ("See Appendix 1 for a recommended
15 study plan."); 2) page 23, lines 3-4 ("A detailed response to Ms. Gonzales' rebuttal testimony, limited to
16 evidence in the hearing record, is provided in Appendix 2."); 3) page 25, line 18-19 ("A recommended
17 study plan is included as Appendix 3"); and page 28, line 18-19 ("A recommended study plan is
18 included in Appendix 4", including footnote 46.). Lompoc overstates the portions of CalTrout's Closing
19 Brief that reference these appendices. Lompoc Motion at 1. With the exception of the statements
20 identified above, CalTrout's Closing Brief does not, and is not intended to, rely on or reference
21 Appendices 1-4.

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23 Dated: _____

Respectfully submitted,

ENVIRONMENTAL DEFENSE CENTER

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26 By: _____

Karen M. Kraus
Attorneys for CALIFORNIA TROUT, INC.